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MEMORANDUM FOR: General Counsel

Department of Defense

Fred: Here is my redraft of Salans' answer to Senator Fulbright on the Case bill. In my opinion I think they should not take the position against the bill and then suggest an alternative. I believe that legislation of any sort is definitely not the answer.

Please let me know your views as soon as possible so we can confer with the Department of State.

Lawrence R. Houston  
General Counsel

CIA

(DATE)

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18 March 1971

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DRAFT  
General Counsel/CIA  
18 March 1971

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of February 11, 1971 requesting our comments on a bill, S. 596, which would require the transmission to the Congress of international agreements other than treaties to which the United States becomes a party.

The Executive Branch agrees with the general purpose of this bill, which we understand is to insure that the Congress is appropriately informed of the conclusion by the United States of new international agreements if it is to carry out properly its constitutional responsibilities. However, in order to accomplish that purpose, we do not believe that legislation is either necessary or desirable. In the first place, legislation of this nature poses a basic constitutional problem as between the Executive Branch and the Congress.

The history of this problem goes back to the beginning of our Government and is well reviewed in Committee Prints of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, in 1958 and 1959, entitled, "The

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Power of the President to Withhold Information From the Congress."

These documents present the considered views of the Attorney General and give the history and the legal implications in great detail. The Attorney General's conclusion is summed up as follows on pages 3 and 4:

. . . And any law passed by Congress, designed to compel the production of papers by heads of departments would necessarily have to comply with the constitutional requirement that the President is as supreme in the duties assigned to him by the Constitution, as Congress is supreme in the legislative functions assigned to it. In other words, Congress cannot, under the Constitution, compel heads of departments by law to give up papers and information, regardless of the public interest involved; and the President is the judge of that interest. . . .

S. 596 would pose one further problem. It would raise questions concerning our compliance with Article 102 of the United Nations Charter, which states in part:

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

We have interpreted this Article as not requiring registration of agreements while they remain classified, but universal acceptance of that interpretation could not be anticipated.

Both of these serious problems could, and we believe should, be resolved by working out arrangements whereby the

Department of State would inform the Senate Foreign Relations Committee and the House Foreign Affairs Committee of international agreements entered into by the United States. No problem exists in supplying copies of unclassified agreements to each Committee within 60 days after any agreement enters into force with respect to the United States. With respect to classified agreements, the Department of State is prepared to work out arrangements with the two Committees whereby such agreements or information concerning them will be made available to the Committees under appropriate security safeguards. We are confident that mutually acceptable agreements can be worked out in this regard.

I know that you will agree that the need for a full flow of information between the Executive and Legislative Branches of our Government is a continuing one and is not limited to international agreements. We believe that this need can be met only by mutual confidence and cooperation between the two Branches, not by legislation.

Sincerely,

David M. Abshire  
Assistant Secretary for  
Congressional Relations  
Department of State

Office of Legislative Counsel  
Thursday - 18 March 1971

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6. (Unclassified - LLM) Accompanied Mr. Houston to a meeting called by Fred Buzhardt, General Counsel, DOD, regarding the Case bill (S. 596), Symington Subcommittee letter, and special security clearances. Also in attendance at the meeting were Messrs. Stuart French, OSD/ISA, and [ ] NSA. See memorandum for the record for details.

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7. (Confidential - PLC) The request of Mr. Tammen, Staff Consultant to the Environmental Committee of Members of Congress for Peace Through Law, for a visit of NPIC by Representative Gilbert Gude (R., Md.) to determine possible application of technology to control the environment was discussed with [ ] and Mr. Edward Proctor. [ ] felt there might be benefits from the visit, but he felt there would be problems in securing necessary approvals. Mr. Proctor did not approve, due to the absence of a clear purpose, the limited access to NPIC and clearance problems. I informed Tammen that his request would involve considerable coordination and I was discouraging as to its approval. He accepted but left open the possibility he might formalize his request through "his boss" and might gain access to NPIC through other channels.

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8. (Unclassified - RCR) In response to a call from Carolyn Ely, in the office of Senator John G. Tower (R., Texas), sent application forms and brochures to be forwarded to a constituent.

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9. (Unclassified - RCR) Mr. Holt, in the office of Representative Samuel S. Stratton (D., N. Y.), called regarding a constituent, [ ] who had written the Representative advising that he had contacted the CIA for employment. Mr. Stratton is very interested in the constituent and wanted to know if his application could be given priority. After checking with [ ] OP, I advised Mr. Holt that the Agency had no record of Mr. [ ] application request, but that I would be glad to forward application forms and brochures to him. Mr. Holt said this would be fine and asked that we keep the Representative advised of Mr. [ ]'s application. [ ] will send out the application package and OP will handle the matter of keeping Mr. Stratton advised.

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JOURNAL

OFFICE OF LEGISLATIVE COUNSEL

Wednesday - 17 March 1971

1. (Secret - JMM) Joe Wolf of State called to say that he is the Department's point of contact with the Symington Subcommittee and they're working on a response to Symington's round robin letter to State, Defense, and CIA of 9 March which among other things requests "any special security clearances" for Subcommittee staff members Lowenstein and Moose. Wolf and I agreed that they might be given SI clearances but not TKH clearances and that the CIA and Defense responses to Symington should simply note that we understand State is handling the clearance problem. Wolf said he had been in touch with Mr. Lehman of Kissinger's staff and this idea, that we would let them be processed for SI but not TKH, was all right with the White House.

Later Ambassador Symmes, Deputy Assistant Secretary of State (Congressional Relations), called in the same connection and we covered the same ground.

Shortly after Mr. Wolf called back and asked that we please hold up our response to Symington pending the outcome of the Department's meeting tomorrow in the Pentagon at which time the whole security clearance problem will be reviewed.

2. (Secret - JMM) Talked to Senator Milton Young (R., N. Dak.) who said he had no particular advice for us regarding tomorrow's appearance before the Defense Subcommittee of Senate Appropriations, but that in recent hearings Senator Ellender had been complaining about the "147,000" people engaged in intelligence activities, and had threatened severe cuts. Young said most of Ellender's criticism was aimed at NSA and DIA and he had no reason to think the Agency would be a primary target.

3. (Internal Use Only - JMM) On the Director's instructions I called the office of Senator Saxbe (R., Ohio) to say that we understood the Senator planned a trip to Vietnam in early April and would be glad to give him a situation briefing prior to his departure or be of assistance in the field if called on. The Senator's secretary said she would pass the message and let us know the answer.

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5. (Secret - JGO) Received a call from Mr. Earl Morgan, House Armed Services Committee staff, who told me that the Committee plans to schedule the Director or his representative to brief the full Armed Services Committee on worldwide roundup as has been done in previous years in conjunction with the Defense posture briefings. Since it is not known how long Committee consideration on the draft bill and related measures will take, a time has not been set for next week. Wednesday or Thursday, 24 or 25 March, appear likely at this time.

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Later in the day I talked to [ ] who confirmed Mr. Morgan's earlier call and discussed with him the security arrangements for the briefing.

6. (Confidential - GLC) Talked with Stu French, OSD/ISA, again about our response to Senator Symington's letters regarding the reestablishment of his Subcommittee on Security Agreements and Commitments Abroad. French said DOD had been in touch with State Department and State indicated they were covering the clearance question in their response. French suggested that we merely include in our letter, naming our point of contact, a statement that we understand necessary security clearances are being initiated by State Department. French added he understands the White House working group on the Symington Subcommittee will probably meet next week.

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7. (Unclassified - LLM) Mr. William Sullivan, in the office of Senator Robert Dole (R., Kans.), called requesting a subscription to the [ ] In line with Sullivan's request, Mr. [ ] will send copies directly from his office until the regular subscription goes into effect.

JOHN M. MAURY  
Legislative Counsel

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cc:  
ER O/DDCI

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[ ]  
Mr. Goodwin Mr. Houston  
DDI DDS DDS&T  
EA/DDP OPPB  
Item 7 - [ ]

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5. (Confidential - GLC) A Lt. Morris, in the Special Access Section of DIA, called and asked if they could be provided with an updated machine run of the 1969 machine listing on Compartmented Information Access for Congressional Staff Members. I told Lt. Morris I would contact our Security people and have them follow up on this. This was turned over to Mr. [ ] Office of Security.

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6. (Confidential - GLC) Accompanied Mr. [ ], OCI, to a briefing of former Speaker John McCormack. This was the second of the bimonthly briefings which are being given McCormack pursuant to instructions from the White House. Subjects covered included the new Soviet ICBM developments, Vietnam, the Middle East and Pakistan.

7. (Confidential - GLC) Called Jim Gehrig, Staff Director, Senate Space Committee, and made arrangements for Mr. Duckett and Mr. Brandwein to brief junior members of the Committee on the Soviet space program tomorrow at 10 a.m. Gehrig expects Senators Weicker, Buckley, and Goldwater to attend.

I mentioned to Gehrig that Senator Margaret Chase Smith had expressed an interest in attending any of our briefings on this subject and suggested he might also want to include her. Gehrig said he would consider this; but in view of her senior position and the fact that much of the material that would be covered in this briefing is already known to her, he felt it would be better to bring her up-to-date at another time.

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8. (Secret - JGO) Mr. [ ] OCI, and [ ] briefed Messrs. John Blandford and Frank Slatinshek, House Armed Services Committee staff, on the Israel/Egypt situation. The briefing was an informal general updating to insure that there had been no major change in the "relation" between the two countries. One item of followup, Mr. Slatinshek requested information on Egyptian delivery capability for CBW. Dr. Chamberlain, OSI, has been advised.

9. (Secret - JGO) Talked to Mr. Ralph Preston, House Appropriations Committee staff, who confirmed his earlier conversation with John Clarke, OPPB, that he will accommodate the Agency's needs and schedule our budget presentation for late April.

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